IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ROMIE D. BISHOP and SHIRLEY A. BISHOP,	)	
Plaintiffs,	)	
v.	)	C.A. No. 01-753-SLR
EUNICE WOODWARD DEPUTY,	)	
Defendant.	)	

Romie D. Bishop and Shirley A. Bishop of Middletown, Delaware. Pro se Plaintiffs.

David H. Williams, Esquire and Jennifer L. Brierley, Esquire of Morris, James, Hitchens & Williams, LLP, Wilmington, Delaware. Counsel for Defendant.

MEMORANDUM OPINION

Wilmington, Delaware
Dated: April 28, 2003

ROBINSON, Chief Judge

I. INTRODUCTION

On November 20, 2001 plaintiffs Romie D. Bishop and Shirley A. Bishop filed a complaint alleging violations of 42 U.S.C. § 1985 and various state laws against defendant Eunice Woodward Deputy. (D.I. 1) Plaintiffs subsequently filed motions for a temporary restraining order and default judgment, both of which were denied. (D.I. 15, 16, 28) Presently before the court is plaintiffs' motion to compel and defendant's motion for summary judgment. (D.I. 64, 68) For the reasons that follow, defendant's motion for summary judgment is granted and plaintiffs' motion to compel is denied as moot.

II. BACKGROUND

Defendant is a social worker employed by the Appoquinimink School District (the "District"). Plaintiffs are the parents of a minor child, W.E.B., presently enrolled in the Appoquinimink School District. In December 2000, W.E.B. began accumulating consecutive unexcused absences from school. Plaintiffs refused to send their child to school because they believed he was being harassed and bullied by other students.

On January 4, 2001, plaintiffs met with Tony Marchio, the Superintendent of the District, and various other members of the District to discuss their concerns about W.E.B.'s school environment. At the meeting, plaintiffs intimated that it was their desire for W.E.B. to attend school in the Christina School

District. Because Appoquinimink was W.E.B.'s home district, he would only be allowed to attend school in the Christina School District if he was accepted by the Christina District through Delaware's School Choice Program, 14 Del. C. § 401 et seq. During the meeting, Mr. Marchio agreed to help plaintiffs in their attempt to transfer their child to the Christina School District but reminded them that W.E.B. would need to return to school in the interim.

By January 8, 2002, W.E.B. still had not returned to school and plaintiffs' case was referred to defendant for her assistance and intervention. Consistent with her responsibilities as a social worker in the District, defendant contacted plaintiffs by telephone to inquire about W.E.B.'s absence and inform plaintiffs of the legal ramifications of holding their child out of school. Plaintiffs continued to keep W.E.B. out of school and met again with District administrators on January 22, 2001 to discuss W.E.B.'s return. At the meeting plaintiffs rejected all of the District's offers to accommodate W.E.B. and refused to send him back to school.

On January 25, 2001, defendant on behalf of the District, pursued legal action against plaintiffs for truancy in Justice of the Peace Court 15 under Delaware's compulsory school attendance statute, 14 Del. C. § 2701 et seq. On February 8, 2001, defendant appeared before the Justice of the Peace court to

execute and swear to the court prepared "Complaint and Summons/Warrant" documentation against Shirley Bishop. On February 13, 2001, defendant returned to the court to do the same for the action against Romie Bishop. On February 22, 2001, plaintiffs appeared in Justice of the Peace Court and pled not guilty. After several continuances, on June 15, 2001, defendant received a notice of nolle prosequi from the deputy attorney general dismissing the charges against plaintiffs without prejudice to refile if they failed to comply with 14 Del. C. § 2702. Plaintiffs filed the above captioned lawsuit on November 20, 2001.

III. STANDARD OF REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper

Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted).

If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

In their complaint, plaintiffs make a number of allegations against defendant. They first assert that defendant conspired with two Justice of the Peace Court judges to back date the

filing of criminal charges to precede a due process filing of plaintiffs'. Next, they contend that defendant conspired with two guidance counselors in the District to provide false attendance reports to the Justice of the Peace Court. Finally, plaintiffs allege that defendant has stalked their home and place of business and continues to harass and defame them. Plaintiffs allege these acts are a violation of 42 U.S.C. § 1985 as well as several Delaware criminal statutes.

Defendant now moves for summary judgment arguing that, inter alia, plaintiffs have produced no evidence in support their allegations. Defendant contends that during discovery in the case, plaintiffs have generated no evidence in either deposition testimony, interrogatory answers, admissions or documents to support any of their allegations. Furthermore, plaintiffs failed to plead any facts in their complaint that implicate § 1985. Finally, plaintiffs have failed to plead all of the essential elements of any state law claims in their complaint. Even if plaintiffs were allowed to amend their complaint to remedy these deficiencies, there is still no evidence to support the allegations.

In their answering brief, plaintiffs do not dispute the material facts established by defendant. Nor do plaintiffs address defendant's arguments or produce any relevant evidence supporting their claims. Rather, plaintiffs merely reiterate

their initial allegations, make new bare accusations and accuse defendant and others in the District of lying.

This court has held that when a plaintiff fails to produce evidence beyond mere accusations to support its claims, summary judgment for a defendant is appropriate. Farmer v. E.I. DuPont de Nemours & Co., 790 F. Supp. 493 (D. Del. 1992) Mindful that plaintiffs in this case are acting pro se, the court concludes that they have failed to make any evidentiary showing in support of their allegations. Based on the record presented, there is not sufficient evidence to enable a jury reasonably to find for plaintiffs on any of their allegations; therefore, summary judgment is proper. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

V. CONCLUSION

For the reasons stated, defendant's motion for summary judgment is granted and plaintiffs' motion to compel is denied as moot. An appropriate order shall issue.

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Defendant.	)	

O R D E R

At Wilmington, this 28th day of April, 2003, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Plaintiffs' motion to compel (D.I. 64) is denied as moot.

2. Defendant's motion for summary judgment (D.I. 68) is granted.

3. The Clerk of Court is directed to enter judgment in favor of defendant against plaintiffs.

Sue L. Robinson
United States District Judge